Chan Beng Tiow v Kok Mei Mooi

HIGH COURT (IPOH) — CIVIL APPEAL NO A-02–642 OF 2006
MOHD AZMAN HUSIN JC
25 SEPTEMBER 2006

Family Law — Children — Maintenance — Variation of maintenance order

A summons in chambers was filed on 6 November 2003 by the petitioner for orders, inter alia: (i) that the respondent be paid by the petitioner a monthly maintenance of RM500 per month beginning from 1 July 2000; (ii) a total sum of RM2,000 be paid to the petitioner's children, Chan Wai Leng, Chan Weng Yew, Chan Wai Sarn and Chan Wai Yi (each child RM500 per month), respectively, by reducing the amount payable thereunder in accordance with s 83 and/or s 96 of the Law Reform (Marriage Divorce) Act 1976; and (iii) that the respondent be paid costs and other alternative reliefs. The grounds for the petition were that the petitioner retired in July 2003 with RM287.10 monthly pension upon retirement, the petitioner remarried and the present wife was not in employment, the petitioner's present wife was a cancer patient and constantly required medical care. Further, the petitioner had bought a new vehicle to ferry the petitioner's wife to and from hospital. Fourthly, the petitioner's expenditure increased as a result of the petitioner's additional obligations towards the petitioners new family and lastly the petitioner's eldest daughter had completed her secondary education and had attained the age of majority. The above application, however, was opposed by the respondent via affidavit in reply dated 6 February 2004. The respondent contended that firstly the petitioner had good income apart from the petitioner's pension. The petitioner paid a monthly installment of RM1,430 for the new car although the petitioner's monthly pension was RM287.10 (see *Leow Kooi Wah v Philip Ng Kok Seng & Anor* [1997] 3 MLJ 133). Secondly, the petitioner had never paid anything for his eldest daughter and thirdly the respondent had spent RM3,570 for the children and herself; and still required maintenance from the petitioner. It was also alleged that the petitioner's present income was untrue and fraudulent. In reply to the above contentions by the respondent's counsel, the petitioner's counsel argued that ss 83 and 96 allowed for variation or rescission of the maintenance order if there were any material change in the circumstances such as inflation, income and remarriage (see *Girela v Tan* [1986] 2 MLJ 297). The issue for the court was whether there was a material change in the circumstances which led to the variation of the maintenance order.

Held:

Sections 83 and 96 of the Law Reform (Marriage And Divorce) Act 1976 allowed the court to vary or rescind any order for the custody or maintenance of a child where there was material change in the circumstances. The decision in *Gisela Getrud Abe v*

Tan Wee Kiat [1986] 2 MLJ 29 was binding, wherein the word 'to vary' in ss 83 and 96 of the Law Reform (Marriage and Divorce) Act 1976 ought be given a wide meaning and not be confined only to increase or reduce the amount of the periodical payments of maintenance for the wife and/or the children of the marriage but also to include power to suspend the maintenance order or any provisions thereof temporarily and to revive the operation of the maintenance order or any provisions so suspended. The material change was that the eldest daughter had attained the age of majority. She was working as a clerk with a monthly income of RM1,300. The petitioner's present wife was suffering from cancer and needed extra money for the treatment. Therefore, the monthly maintenance of RM500 for the eldest daughter was rescinded since she was no longer a minor, was working and had sufficient money to survive (see para 9).

[Bahasa Malaysia summary

Satu saman dalam kamar telah difailkan pada 6 November 2003 oleh pempetisyen bagi perintah-perintah, antara lain: (i) bahawa responden dibayar oleh pempetisyen satu penyelenggaraan bulanan sebanyak RM500 bermula dari 1 Julai 2000; (ii) sejumlah RM2,000 dibayar kepada anak-anak pempetisyen, Chan Wai Leng, Chan Weng Yew, Chan Wai Sarn dan Chan Wai Yi (RM500 bagi setiap anak) masing-masing dengan mengurangkan jumlah yang perlu dibayar mengikut s 83 dan/atau s 96 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976; dan (iii) bahawa responden dibayar kos dan relif-relif lain. Alasan-alasan untuk petisyen adalah pempetisyen telah bersara dalam Julai 2003 dengan RM287.10 pencen bulanan selepas persaraan, pempetisyen telah berkahwin semula dan isterinya yang baru tidak berkerja serta menghidapi penyakit barah dan kerap kali memerlukan penjagaan perubatan. Selanjutnya, pempetisyen telah membeli sebuah kereta baru untuk membolehkan isteri pempetisyen berulang alik ke hospital. Keempat, perbelanjaan pempetisyen telah naik atas sebab obligasi tambahan terhadap pempetisyen keluarga baru. Akhirnya, perempuan sulung pempetisyen telah menghabiskan pelajaran menengah dan telah mencapai umur majoriti. Permohonan di atas telah dibantah oleh responden melalui afidavit jawapan bertarikh 6 Februari 2004. Responden menegaskan bahawa pempetisyen mempunyai pendapatan yang baik melainkan pencen pempetisyen. Pempetisyen telah membayar wang ansuran sebanyak RM1,430 bagi kereta baru walaupun pencen adalah sebanyak RM287.10 (lihat *Leow Kooi Wah v Philip Ng Kok Seng & Anor* [1997] 3 MLJ 133). Kedua, pempetisyen tidak pernah membayar apa-apa untuk perempuan sulungnya dan ketiga, responden telah menghabiskan RM3,570 untuk anak-anak dan dirinya dan masih memerlukan penyelenggaraan pempetisyen. Adalah dikatakan bahawa pendapatan pempetisyen pada masa sekarang adalah tidak benar dan terdapat penipuan. Di atas segala jawapan kepada segala penegasan di atas oleh peguamcara responden, peguamcara pempetisyen telah mempertikaikan bahawa s 83 dan 96 membenarkan variasi atau pembatalan perintah penyelenggaraan jikalau terdapat sebarang penukaran material seperti inflasi, pendapatan dan perkahwinan semula (lihat *Girela v Tan* [1986] 2 MLJ 297). Isu untuk mahkamah adalah sama ada terdapat penukaran material di dalam sesuatu keadaan yang membenarkan variasi dalam perintah penyelenggaraan.

Diputuskan:

Seksyen 83 dan 96 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 membenarkan mahkamah mengubah atau membatalkan sebarang perintah untuk jagaan atau penyelenggaraan bagi anak di mana terdapat satu penukaran material di dalam keadaan. Keputusan dalam *Gisela Getrud Abe v Tan Wee Kiat* [1986] 2 MLJ 29 adalah terikat, di mana perkataan 'ubah' dalam ss 83 dan 96 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 patut diberikan satu maksud yang lebar dan tidak hanya terbatas untuk menaikkan atau mengurangkan jumlah dalam bayaran ansuran penyelenggaraan bagi isteri dan/atau anak-anak hasil daripada perkahwinan mereka. Tetapi juga termasuk kuasa untuk menggantung perintah penyelenggaraan ataupun sebarang peruntukan untuk sementara dan mengembalikan operasi perintah penyelenggaraan atau penggantungan sebarang peruntukan. Penukaran material adalah bahawa perempuan sulung telah mencapai umur majoriti. Dia bekerja sebagai kerani dengan pendapatan bulanan sebanyak RM1,300. Pempetisyen isteri yang baru menghidapi barah dan oleh itu memerlukan wang berlebihan bagi rawatan tersebut. Oleh itu, penyelenggaraan bulanan sebanyak RM500 bagi perempuan sulungnya telah dibatalkan sejak beliau tidak lagi dibawah umur, berkerja dan mempunyai wang cukup untuk hidup (lihat perenggan 9).]

Notes

For cases on variation of maintenance order, see 7(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 3023–3037.

Cases referred to

Girela v Tan [1986] 2 MLJ 297 (folld)
Gisela Gertrud Abe v Tan Wee Kiat [1986] 2 MLJ 58 (refd)
Leow Kooi Wah v Philip Ng Kok Seng & Anor [1997] 3 MLJ 133 (folld)
Lim Bee Kee v Leong Ah Chuan [1998] 1 MLJ 675 (refd)

Legislation referred to

Law Reform (Marriage Divorce) Act 1976 ss 83, 96

Leong & Tan for the appellant.
Chang Ko Youn, Liew & Co for the respondent.

Mohd Azman Husin JC:

[1] The petitioner Mr Chan Beng Tiow filed summons in chambers encl 27 on 6 November 2003 for the following orders:

(i) The order dated 28 June 2000 for petitioner to pay the respondent Mdm Kok Mei Mooi monthly maintenance of RM500 per month beginning from 1 July 2000 and to pay a total sum of RM2,000 a month for children of the petitioner and the respondent namely Chan Wai Leng, Chan Weng Yew, Chan Wai Sarn and Chan Wai Yi (being RM500 per month each child) respectively be varied by reducing the amount payable thereunder in accordance with s 83 and/or s 96 of the Law Reform (Marriage Divorce) Act 1976;

(ii) Costs; and

(iii) Such further or other alternative reliefs which this Honourable Court shall deem fit or expedient

[2] The main grounds of the application are:

(i) The petitioner retired in July 2003 with RM287.10 monthly pension upon retirement;

(ii) The petitioner remarried and his present wife is not in employment and is a cancer patient. She requires constant medical care and is financially dependant upon the petitioner;

(iii) The petitioner just bought a new vehicle to ferry his wife to and from hospital;

(iv) The petitioner's expenditures have increased as a result of his additional obligations towards his new family;

(v) The petitioner's eldest daughter has completed her secondary education and attained the age of majority and is employed as a clerk earning RM1,300 per month and is not dependent on the petitioner anymore.

[3] The respondent opposed the summons in chambers encl 27. She filed an affidavit in reply on 6 February 2004. She contended that:

(i) The petitioner has good income apart from his pension. He affords to pay monthly instalment of RM1,430 for the brand new car he bought though his monthly pension is RM287.10 only;

(ii) The petitioner has never paid anything for his eldest daughter Chan Wai Leng;

(iii) She spent RM3,570 for her children and for herself;

(iv) She still needs the maintenance of the petitioner.

[4] In written submission, the learned counsel for the petitioner contended that:

(1) Sections 83 and 96 of the Law Reform (Marriage and Divorce) Act 1976 are applicable. Sections 83 and 96 allowed to vary or rescind maintenance order if there has been any material change in the circumstance as decided by the Federal Court of *Girela v Tan* [1986] 2 MLJ 297.

(2) The petitioner is looking after his present wife who is suffering from cancer problem.

[5] Typical reasons which are likely to justify change are inflation, income, remarriage.

[6] On the other hand, the learned counsel for the respondent contended that:

(1) The petitioner is responsible and duty bound to his first family eventhough he is remarried with the new wife. Decision of the High Court case of *Lim Bee Kee v Leong Ah Chuan* [1998] 1 MLJ 675 is relevant.

(2) The petitioner has good income apart from his small pension. He affords to buy the new car with monthly installment of RM 1,430. High Court case decision of *Leow Kooi Wah v Philip Ng Kok Seng & Anor* [1997] 3 MLJ 133 is relevant to this case. Allegation of his present income is not true and there is some sort of fraud.

(3) The petitioner's new wife does not require constant medical care.

[7] In reply, the learned counsel for the petitioner contended that:

(1) Decision of *Lim Bee Kee's* case is distinguishable.

(2) The learned counsel for the respondent did not contradict the material issue.

(3) The learned counsel for the respondent failed to provide sufficient proof of fraud and the issue of fraud should be expunged from the record.

THE COURT'S FINDINGS

(1) The petitioner has good income eventhough he did not give particulars of his monthly income apart from his monthly pension of RM287.10. He affords to pay monthly instalment of RM1,430 for his new car.

(2) The petitioner's present wife is suffering from cancer. He needs extra money for her treatment.

(3) The eldest daughter of the petitioner named Chan Wai Leng is attaining the age of 26 years old and working as a clerk earning RM1,300 per month.

(4) Sections 83 and 96 of the Law Reform (Marriage And Divorce) Act 1976 allow the court to vary or rescind any order for the custody or maintenance of a child..... where it is satisfied that there has been any material change in the circumstances.

(5) I am satisfied that there is material change namely:

(i) The eldest daughter, Chan Wai Leng attained the age of majority. She is working as a clerk with monthly income of RM1,300;

(ii) The petitioner's present wife is suffering from cancer. He needs extra money for her treatment.

[8] I am bound by the decision of Federal Court in the case of *Gisela Getrud Abe v Tan Wee Kiat* [1986] 2 MLJ 58.

[9] In that case, it was held that the word 'to vary' in ss 83 and 96 of the Law Reform (Marriage and Divorce) Act 1976 should be given a wide meaning and should not be confined only to increase or reduce the amount of the periodical payments of maintenance for the wife and/or the children of the marriage but also to include power to suspend the maintenance order, or any provisions thereof temporarily and to revive the operation of the maintenance order or any provisions so suspended.

[10] Hence, I rescind the monthly maintenance for the eldest daughter, Miss Chan Wai Leng of RM500 since she is no longer minor, working and has sufficient money to survive. I confirm the rest of the order dated 28 June 2000. I order costs of this proceedings be borne by both parties.

Costs of proceedings be borne by both parties.

Reported by Janani Suntharalingam